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In the

Supreme Court of The United States

October Term, 1928.

No. 39

J. R. WHEELER,

Petitioner,

vs.

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

RESPONDENT'S BRIEF.

EDWIN S. MACK,
ARTHUR W. FAIRCHILD,
J. GILBERT HARDGROVE,

Counsel for Respondent.

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In the

Supreme Court of The United States

October Term, 1928.

No. 711.

J. R. WHEELER,
Petitioner,

vs.

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin.

RESPONDENT'S BRIEF.

STATEMENT OF CASE.

This is a proceeding on writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit, which reversed the judgment of the District Court for the Eastern District of Wisconsin,

in an action instituted by the respondent, Howard Greene, Receiver (there plaintiff), against the petitioner, J. R. Wheeler (there defendant). The action was brought to enforce the statutory liability of the petitioner, J. R. Wheeler, as a stockholder of the Bankers Joint Stock Land Bank of Milwaukee.

The District Court's judgment was rendered on demurrer; and the sole question here involved is whether the Federal Farm Loan Board may make an assessment of the statutory liability of the stockholders of an insolvent joint stock land bank and authorize its collection by the receiver of the bank appointed by the Board.

The opinion of the Circuit Court of Appeals is reported in 29 Fed. (2nd) 468 (R. pp. 14-22).

The District Court rendered no opinion.

STATUTES. *

Some parts of the Federal Farm Loan Act and National Bank Act deemed important are set out in the Appendix hereto (*Infra* pp. 64-72).

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* For convenience references to Title 12 United States Code are herein given as "U. S. C." and references to sections of the Federal Farm Loan Act as "F. L. A."

SUMMARY OF ARGUMENT.

The administration of the Farm Loan Act is expressly placed under "the direction and control" of the Farm Loan Board; the Board is "charged with the execution" of the Act and broad supervisory and incidental powers are expressly vested in it (F. L. A. §§1, 3, 17 (i) (j); U. S. C. §§641, 651, 831).

The comprehensive administrative powers of the Farm Loan Board necessarily include the assessment and collection of the stockholders' statutory liability. Petitioner seeks to negative power in the Farm Loan Board to provide for assessment and collection because the receivership provision of the Farm Loan Act has no express clause such as set forth in the National Bank Act, for enforcement of the stockholders' liability. This argument overlooks the fundamental difference in the structure of the two acts and disregards the wide general powers conferred on the Farm Loan Board but not given to the Comptroller under the National Bank Act.

Even under the National Bank Act the power to levy an assessment on the stockholders for this additional liability is implied.

The National Bank Act was adopted in 1864 and the Farm Loan Act in 1916. One great change in this interval was the development of legislation conferring

increasingly large powers on administrative boards. Due to this change, what was accomplished by one method under the National Bank Act (the vesting of powers in the Comptroller by a series of specific details) was accomplished in the Farm Loan Act by a different method (the vesting in the Farm Loan Board of broad administrative powers). It follows naturally, therefore, that the National Bank Act has more specific provisions as to receivership than the Farm Loan Act; and the omission of the express specific provision found in the National Bank Act from the receivership provisions of the Farm Loan Act does not by any implication negative the existence of such power.

Analysis of the history of the Farm Loan Act, when compared with that of the National Bank Act, including the proceedings in the Congress at the time of the adoption of the Farm Loan Act and the proposal of amendments thereto that failed, corroborates these conclusions and shows that the affairs of joint stock land banks were to be placed under the control and direction of the Farm Loan Board in all relations, whether during solvency or insolvency, and that there was no intention to require creditors to bring separate suit in equity to enforce this stockholders' liability.

Joint stock land banks are public corporations created for governmental purposes. Their supervision is deemed by the Congress essential to the fiscal policies

of the government, and such supervision and control being necessary during the periods of operation of such bank must have been intended to continue throughout all phases of insolvency. The stockholders' statutory liability was provided to improve the security of the bonds of the bank, which are an instrumentality of government; and the stockholders' liability is to be applied with and in aid of the assets of the bank toward the satisfaction of its obligations.

The procedure suggested by the petitioner would burden creditors of the bank with the expense and delay of a double receivership, including a statutory receivership to liquidate the assets and a judicial receivership to enforce the stockholders' liability. The stockholders of the bank are located in over thirty states and a judicial receivership would require ancillary proceedings in each of these states. This duplication with its accompanying expense and delay cannot have been intended by the Congress.

The construction here maintained is that adopted by the Farm Loan Board and it should be given great weight.

Cases arising under state statutes for stockholders' liabilities are irreconcilable and are not controlling here. The government instrumentality in these constitutional agencies is not present in the case of ordinary state corporations. Every presumption is in

favor of complete administration of these constitutional agencies by the government.

The so-called rules of statutory construction asserted by the petitioner are subject to qualification and are not applicable here.

ARGUMENT.

The method of procedure adopted by the Farm Loan Board and approved by the Circuit Court of Appeals for the Seventh Circuit in this case also has been approved by the Circuit Court of Appeals for the Eighth Circuit in the case of *Krauthoff v. Kansas City Joint Stock Land Bank, et al.*, 31 Fed. (2d) 75, and *Krauthoff v. Kansas City Joint Stock Land Bank, et al.*, 23 Fed. (2d) 71.

Petitioner's brief rests primarily on the express grant of authority to the receiver of a national bank to enforce the stockholders' personal liability (U. S. C. §§191, 192) as compared with the receivership provision of the Federal Farm Loan Act (U. S. C. §§961, 962, 963) which does not include any such express specific instruction to the receiver appointed thereunder.

Fundamentally the petitioner's argument disregards the differences in scheme and structure of the two acts and also ignores the broad grant of executive and administrative powers to the Farm Loan Board.

I.

The Federal Farm Loan Board Has Wide General Powers and May Fix Details of Administrative Procedure Thereunder.

The Federal Farm Loan Act rests fundamentally on the grant to the Farm Loan Board of comprehensive general powers, so far reaching as necessarily to be exclusive.

Section 1 of the Act (U. S. C. §641) provides:

> "That this Act may be cited as the 'Federal Farm Loan Act.' *Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created.*" [Italics ours.]

Section 3 of the Act (U. S. C. §651) provides:

> "That there shall be established at the seat of government in the Department of the Treasury a bureau *charged with the execution of this Act* and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board." [Italics ours.]

Section 17 of the Act (U. S. C. §831) provides:

> "That the Federal Farm Loan Board shall have power—. . .

"(i) To exercise *general supervisory authority over* the Federal land banks, the national farm loan associations, and *the joint stock land banks* herein provided for. [Italics ours.]
"(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act."

The language of *Section 1 of the Act* placing " . . . Its administration . . . under the direction and control of the Federal Farm Loan Board . . ." must have been used advisedly to give the widest administrative authority possible to the Farm Loan Board.

The placing of the *"administration"* of the act *"under the direction and control of the Federal Farm Loan Board"* (§1 of the Act) necessarily imports (a) the existence of broad powers to fill in administrative details by establishing methods by which privileges or rights may be secured; and (b) the existence of such quasi judicial and legislative powers as are necessary to put the law into effect.

This conclusion reached from the very nature of the language used is sustained by a number of decisions defining administrative powers.

In *United States v. Chamberlin*, 219 U. S. 250, the government sued to recover certain stamp taxes and the question considered was whether an action lay for recovery of the tax. The court, in confirming the power to sue and recover the tax, said:

[219 U. S. 269] "We are also of opinion that the statute itself provides that payment may be enforced by action. Section 31 makes 'all ad-

ministrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed', applicable to the act. Within 'administrative' provisions must be included those which relate to the collection of the taxes imposed. *For the administration of the statute may well be taken to embrace all appropriate measures for its enforcement,* and there is no substantial reason for assigning to the phrase which is used in the section quoted a narrower interpretation. . . ." [Italics ours.]

In *Cosmos Exploration Company v. Gray Eagle Oil Company,* 190 U. S. 301, the court, in considering statutory powers, much less broad than those here under consideration, held that "the general administration of the . . . Act" was vested in the Land Department and, accordingly, that the Department might adopt rules and regulations for its administration, saying:

[190 U. S. 308] "There can be, as we think, no doubt that the general administration of the forest reserve act, and also the determination of the various questions which may arise thereunder before the issuing of any patent for the selected lands, are vested in the Land Department . . . By virtue of that jurisdiction the General Land Department has power to review and set aside (though not arbitrarily) the decisions of local officers relating to those questions, where such officers have power to make those decisions in the first instance (Citing cases).

"The Land Department also has power to adopt and did adopt rules and regulations for the administration of the forest reserve act. The power existed by virtue of the provisions

> of the Revised Statutes, sections 441, 453 and 2478. Courts will take judicial notice of rules and regulations made by the Land Department regarding the sale or exchange of public land. . . . ."

See also in this respect *Catholic Bishop of Nesqually v. Gibbon*, 158 U. S. 155, 166.

Under language providing that the Commissioner of the General Land Office should perform "*under the direction* of the Secretary of the Interior," the court, in *Knight v. United States Land Association*, 142 U. S. 161, said:

> [142 U. S. 177] "The phrase, 'under the direction of the Secretary of the Interior,' as used in these sections of the statutes, is not meaningless, but was intended as an expression in general terms of the power of the Secretary to supervise and control the extensive operations of the Land Department of which he is the head. It means that, in the important matters relating to the sale and disposition of the public domain, the surveying of private land claims and the issuing of patents thereon, and the administration of the trusts devolving upon the government, by reason of the laws of Congress or under treaty stipulations, respecting the public domain, the Secretary of the Interior is the supervising agent of the government to do justice to all claimants and preserve the rights of the people of the United States. . . ."

In *Silberschein v. United States*, 266 U. S. 221, broad administrative powers were held to be vested in the director of the Veterans Bureau under a law directing that official "to administer, execute and enforce the provisions of the Act."

For the function of the judiciary where administrative power has been vested in an administrative board or body, see *Interstate Commerce Commission v. Illinois Central Railroad Company*, 215 U. S. 452, 470.

In addition to the power vested in the Farm Loan Board by Section 1 to direct and control its administration, *Section 3 of the Act* provides for a "Federal Farm Loan Bureau" "*under the general supervision*" of the Farm Loan Board "*charged with the execution of this Act.*" This in itself imports the widest possible administrative powers. That has been the construction with reference to the President of the United States under the similar provision of Article II. of the Constitution that "he shall take care that the laws be faithfully executed."

William Howard Taft—The Presidency, 63, 70, 76 to 85.

William Howard Taft—Our Chief Magistrate and His Powers, 78 to 85, 94.

In re Neagle, 135 U. S. 1, 63.

Logan v. United States, 144 U. S. 263.

Supplementing the powers vested in the Board by Sections 1 and 3 of the Act, *Section 17 of the Act* provides inter alia:

"That the Federal Farm Loan Board shall have power . . .

"(i) To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for.

"(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act."

Broad administrative powers have been held to exist under language similar to that of Section 17 (i) vesting *"general supervisory authority"* in administrative officers.

In *Knight v. United States Land Association,* 142 U. S. 161, the court said with reference to a grant of supervisory authority to the Secretary of the Interior:

> [142 U. S. 178] ". . . The statutes in placing the whole business of the Department under the supervision of the Secretary, invest him with authority to review, reverse, amend, annul or affirm all proceedings in the Department having for their ultimate object to secure the alienation of any portion of the public lands, or the adjustment of private claims to lands, with a just regard to the rights of the public and of private parties. Such supervision may be exercised by direct orders or by review on appeals. *The mode in which the supervision shall be exercised in the absence of statutory direction may be prescribed by such rules and regulations as the Secretary may adopt.* When proceedings affecting titles to lands are before the Department the power of supervision may be exercised by the Secretary, whether these proceedings are called to his attention by formal notice or by appeal. It is sufficient that they are brought to his notice. . . ." [Italics ours.]

See also

Williams v. United States, 138 U. S. 514, 524.

Orchard v. Alexander, 157 U. S. 372, 378.

In addition to the supervisory powers vested in the Board by paragraph (i) of Section 17, paragraph (j) of the same Section vests the Board with authority "To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of (the) Act."

By Section 1 of the Act, the Board is charged with the direction and control of its administration and, by Section 17 (i), with general supervisory authority over joint stock land banks. This, together with the grant of authority in Section (j) "To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of (the) Act," seems clearly to include all necessary powers to provide rules and regulations, fill in administrative details and exercise such quasi-judicial and legislative powers as are necessary to give effect to the various provisions of the Act.

As stated in *Talbott v. Silver Bow County*, 139 U. S. 438:

> [139 U. S. 443] "Further it is a general rule in the construction of statutes that when in the earlier and declaratory sections the scope and extent of the power and privileges granted are once stated, the character of the grant as thus disclosed controls and interprets all subsequent sections; and it is unnecessary in each subsequent section to restate or use words and expressions which shall fully disclose the extent of those powers and privileges; but these subsequent sections will be understood, (unless there be words of restriction and limitation therein,) as coextensive with and applicable to the scope, and the full scope, and extent of the powers theretofore granted."

The case of *United States vs. George*, 228 U. S. 14, emphasized in Petitioner's reply brief, was distinguished in *United States vs. Smull*, 236 U. S. 405, 411, and *United States vs. Morehead*, 243 U. S. 607, 616. See also *United States vs. Birdsall*, 233 U. S. 223, 230.

II.

The Administrative Powers of the Farm Loan Board are so Comprehensive as Necessarily to Include the Assessment and Collection of the Stockholders' Liability.

1.

The Personal Liability of Stockholders is for the debts of the Bank and the Act contemplates its enforcement by the Federal Farm Loan Board.

Section 16 of the Federal Farm Loan Act (U. S. C. Section 812) provides:

> "Shareholders of every joint stock land bank organized under this Act shall be held individually responsible, equally and ratably, and not one for another, *for all contracts, debts, and engagements* of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares." [Italics ours.]

Petitioner assumes throughout *(Petitioner's brief* 2, 4, 5, 8, 9, 15, 20, 50, 60, 61, 71, 75, 81 and 87) that the double liability of stockholders is *to creditors* and, inasmuch as the receiver is not a creditor and this liability is not an asset of the bank, he, therefore, cannot enforce it.

From the language of the statute it is clear that the liability is not one phrased *to creditors* but a liability *for the debts of the bank* without any express statement as to who shall enforce it.

The distinction between a statute phrasing the liability as *to* creditors and one phrasing the liability as *for* the debts of the bank was emphasized in *Wilson, et al. v. Book, et al.*, 13 Wash. 676, 43 Pac. 939, where the court said:

> [43 Pac. 939] ". . . It will be seen that there is no language which in express terms gives the creditors the immediate or any right of action. The liability is not on, but for, the contract, debt, or agreement. . . . There is nothing in our constitution which defines the method by which this liability shall be made available. Hence the method must be determined by the courts, and their aim should be to prescribe one which will accomplish the object of the provision with the least inconvenience to the creditors, without unnecessary annoyance to the stockholders. . . ."
>
> [43 Pac. 940] "The receiver, when appointed, takes possession of all the property of the corporation for the benefit of all its creditors; and it should be held that he has the right, under the direction of the court, to enforce every liability, of whatever nature, which the court may find necessary to fully protect the rights of the creditors. In this way all creditors will share alike, and the entire affairs of the corporation, including the adjustment of the liabilities of its stockholders, will be subject to the control of the court in a single action, and unnecessary delay and expense prevented. . . ."

See also *Patterson v. Lynde*, 106 U. S. 519, where the court emphasized the same difference in language.

Further, Section 16 of the Act (U. S. C. §812) provides that shareholders "*shall be held* individually responsible", not merely that they shall *be* respon-

sible. The language of the section imports action and a duty to prevent the escape of the shareholder and, by implication, must vest in the Federal Farm Loan Board (charged with the administration of the Act and vested with all necessary power to fulfill its duties and carry out the purposes of the Act) the duty of enforcing the liability.

In the above respects (a) the provision that the stockholders are liable *for* the debts and engagements of the bank and (b) the provision that the stockholders shall be *held* individually responsible for the debts and engagements of the bank, Section 16 of the Act (U. S. C. §812) is similar to the stockholders' liability provision of the National Bank Act, liability under which is enforced by assessment of the Comptroller.

The decisions holding that creditors can enforce such a liability merely arise from the legal conclusion that the creditors, as beneficiaries of the statutory obligation, should have the right to enforce it when necessary to prevent it being a nullity. The right of creditors to enforce such a liability and the appointment of a receiver for that purpose by a court of equity does not arise from a statutory creation of a remedy therefor but from the lack of a statutory remedy and the resulting consequence that equity must give a remedy in order that the right shall not be destroyed.

That such is the case is illustrated by the statement of the court in *Richmond v. Irons*, 121 U. S. 27, where, in speaking of the absence of a statutory remedy to enforce the stockholders' liability of a national bank in voluntary liquidation, the court said:

> [121 U. S. 48] "... It can hardly be supposed that the omission in the statute to provide an express and specific course of proceeding, by way of judicial remedy, in case of voluntary liquidation, left the creditors of such an association in such circumstances without remedy against either a deficiency of assets or the results of a fraudulent maladministration. . . . ."

Our contention is that the Congress did not intend this Act to provide the right without a means of enforcement but, on the contrary, that the Farm Loan Board, under its administrative powers, is entitled to provide the means of enforcement and that, therefore, the resort to equity for lack of other remedy is unnecessary.

2.

The Administrative Powers of the Farm Loan Board are not Limited by the Express Grant of Specific Powers.

Petitioner contends (*Petitioner's brief*, p. 70) that the particularization of powers granted the Farm Loan Board and the failure expressly to vest power in the Board to levy an assessment upon stockholders negatives the existence of such a power in the Board and, therefore, none can be implied.

The fact that the Farm Loan Act vests specific duties in the Farm Loan Board with reference to matters upon which it is intended to have the Board act personally and not by delegation of its authority, does not negative the existence of administrative powers under the express grant thereof in Sections 1, 3 and 17 (i) and (j) of the Act (U. S. C. §§641, 651, 831 (i)

(j)). It was wise to give form to the Act by vesting certain duties specifically in the Farm Loan Board and this was done without intending thereby to limit the general administrative powers of the Board.

The rules for construction applicable in fixing the administrative powers of the Farm Loan Board under the Federal Farm Loan Act are like those applied in the construction of the general powers granted to the President under Article II of the Constitution.

Hamilton, in speaking of the fact that Article II of the Constitution vests the executive powers in the President of the United States and that the same Article, in succeeding Sections, proceeds to delineate particular cases of executive power, said:

> [Letter to the Gazette of the United States: June 29, 1793] . . . "The difficulty of a complete enumeration of all the cases of executive authority, would naturally dictate the use of general terms, and would render it improbable that a specification of certain particulars was designed as a substitute for those terms, when antecedently used. The different mode of expression employed in the constitution, in regard to the two powers, the legislative and the executive, serves to confirm this inference. In the article which gives the legislative powers of the government, the expressions are, 'All legislative powers herein granted shall be vested in a congress of the United States.' In that which grants the executive power, the expressions are, '*The executive power* shall be vested in a President of the United States.'
>
> The enumeration ought therefore to be considered, as intended merely to specify the principal articles implied in the definition of executive power; leaving the rest to flow from the general grant of that power, interpreted in con-

formity with other parts of the Constitution, and with the principles of free government."
Alexander Hamilton's Works (Ed. by John C. Hamilton) Vol. VII, pp. 80-81.

See also *Kansas v. Colorado*, 206 U. S. 46, 81 to 83.

3.

The omission of express specific provision for enforcement of the liability does not diminish the power of the Farm Loan Board.

The broad, administrative and supervisory powers vested in the Farm Loan Board under the Farm Loan Act seem clearly to comprehend the fixing by the Board of such administrative details as are necessary for enforcement of the liability either directly through the Board or through the receiver appointed by the Board as the Board shall determine.

Petitioner proposes to negative any power in the Farm Loan Board to fix the administrative details for collection of the stockholders' liability because the receivership provision of the Farm Loan Act has no express clause on stockholders' liability such as is set forth in the National Bank Act *(Petitioner's brief*, pp. 16, 17, 51). His argument rests essentially on a comparison of a single section of each of the Acts and it disregards the grant to the Farm Loan Board of administrative powers much wider than those of the Comptroller under the National Bank Act. The difference in structure of the acts we discuss hereinafter. (See *infra* pp. 27-32).

The difference in the grant of powers appears from the following comparison:

FARM LOAN ACT.

F. L. A. Sec. 1 (U. S. C. 641). "That this Act may be cited as the 'Federal Farm Loan Act.' *Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created.*" [Italics ours.]

F. L. A. Sec. 3 (U. S. C. 651). "That there shall be established at the seat of government in the Department of the Treasury *a bureau charged with the execution of this Act and of all Acts amendatory thereof,* to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board." [Italics ours.]

F. L. A. Sec. 17 (U. S. C. 831). "That the Federal Farm Loan Board shall have power—

. . .

"(i) *To exercise general supervisory authority* over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for.

"(j) *To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this act.*" [Italics ours.]

NATIONAL BANK ACT.

[No corresponding section.]

U. S. C. Sec. 1. "There shall be in the Department of the Treasury *a Bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds* and, under the general supervision of the Federal Reserve Board, of all Federal reserve notes, the chief officer of which bureau shall be called the Comptroller of the Currency and shall perform his duties under the general directions of the Secretary of the Treasury." [Italics ours.]

[No corresponding section.]

[No corresponding section.]

The Comptroller is merely the chief officer of a bureau charged with the execution of laws passed by Congress relating to the issue and regulation of national currency, whereas the Federal Farm Loan Board, besides being directed to supervise a bureau charged with the execution of the entire Farm Loan Act, also is charged with the direction and control of the administration of the entire Act and is expressly empowered to exercise general supervision over joint stock land banks and granted such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of the Act. Clearly, such incidental powers must necessarily include such powers as are reasonably necessary to direct and control the administration of the Farm Loan Act, including therein the provision of Section 16 providing for a double liability of stockholders.

In discussing the incidental powers under Section 17 (j) of the Act (U. S. C. §831) *(Petitioner's brief* pp. 53-58) petitioner treats the subject as if all that were involved are the powers expressly granted by the preceding nine subdivisions of this Section 17. He disregards the fact that the incidental powers are those necessary for the Board to "fulfill its duties and carry out the purposes of this Act"—and the duties so provided for include the general administrative powers granted in the first section of the Act.

See *First National Bank in St. Louis v. State of Missouri*, 263 U. S. 640, 659, defining an incidental power as one necessary to carry into effect those which are granted.

Petitioner's suggested interpretation fails to give any weight whatsoever to the administrative powers vested in the Board by Sections 1, 3 and 17 (i) of the Act (U. S. C. §§641, 651, 831 (i)). This is expressly contrary to the rule that all the words used in a statute should be given their proper signification and effect.

Platt v. Union Pacific Railroad Company, 99 U. S. 48.

Lawrence v. Allen, 7 How. 785, 793.

4.

Even under the National Bank Act power in the Comptroller to make assessment of stockholders' liability is implied.

Enforcement of the stockholders' liability under the National Bank Act requires, as a condition precedent, that the extent of deficiency in assets be determined and the amount of the stockholders' liability be fixed.

Under the provisions of the National Bank Act, a receiver is vested with authority to enforce the liability (U. S. C. Sec. 192) but no express provision is made for assessment of the liability, either by a receiver or the comptroller, and the enforcement of this liability is not included in the matters expressly placed under the Comptroller's direction. The only express authority to the Comptroller in this connection is with reference to the assets "*of the association*" and debts, etc. "*belonging to it.*"

The statutes (U. S. C. Sec. 55) make express provision for assessment of stockholders of a national bank only for payment or restoration of the capital either because the capital is not paid up as required by law or the capital stock has been impaired by losses. This express statutory provision for assessment has no relation to the stockholders' personal liability for debts of the bank.

Commercial National Bank v. Weinhard, 192 U. S. 243, 248.

It is clear, therefore, that there is no express statutory provision in the National Bank Act for the important function of determining the amount of the stockholders' liability in making an assessment.

On the petitioner's theory *(Petitioner's brief*, p. 61) the absence of express grant of power of assessment in the National Bank Act would require judicial proceedings for an assessment, presumably by a proceeding in equity brought by the statutory receiver. On petitioner's theory,this conclusion also would follow from the fact that the Comptroller was given express power to levy assessments to restore capital.

Petitioner states (*Petitioner's brief*, pp. 80, 77, 83, 86) that the National Bank Act "*expressly* provides" that the receiver shall enforce the stockholders' liability "under the direction of the Comptroller." Examination of the Act (U. S. C. Sec. 192) will show this statement to be erroneous.

The provision for receivership of a national bank (U. S. C. Sec. 192) set forth (a) that the receiver "under the direction of the Comptroller" shall take possession of the bank's assets and collect the debts, etc.

"belonging to it," (b) that "upon the order of a court of record" he may compound debts and sell property and (c) that he may enforce the stockholders' liability. It will be noted that the provision for the Comptroller's direction refers only to taking possession of the bank's assets and collecting its debts and that the provision for enforcement of the stockholder's liability follows not the provision for action under direction of the Comptroller but the provision for action under order of a court. On the petitioner's theory of statutory construction *(Petitioner's brief,* pp. 41-45) the express provision for direction of the Comptroller as to taking possession of the bank's assets and collection of its debts with no corresponding provision as to enforcement of the stockholders' liability, would negative any power of the Comptroller to levy an assessment.

This court, however, definitely settled the law to the contrary of both of the petitioner's theories, holding power implied in the Comptroller to make a conclusive assessment.

Kennedy v. Gibson, 8 Wall. 498, 505.
Casey v. Galli, 94 U. S. 673.
U. S. v. Knox, 102 U. S. 422.
Bushnell v. Leland, 164 U. S. 684.
Rankin v. Barton, 199 U. S. 228.
Christopher v. Norvell, 201 U. S. 216.

In reaching the conclusion that power to levy the assessment must be implied in the comptroller, this court, in the *Gibson case,* 8 Wall. 498, laid most stress on the delay which would result, the "large losses by insolvency and otherwise in the intervening time";

the "time" which would be "consumed in the application of these tests," the necessity for a "speedy adjustment" as essential to "the efficiency and utility of the law," the fact that the interests of creditors required it, and that it "was the obvious policy and purpose of Congress to give it."

Similarly, in *Korbly, Receiver, v. Springfield Institution for Savings, et al.*, 245 U. S. 330, 333, the court held that the National Bank Act should not be given a technical construction which would so restrict the powers of the comptroller as to delay and impede the settlement of the affairs of a bank and that the Act should be given a liberal interpretation to promote the expeditious winding up of a bank's affairs.

These considerations apply equally to the case at bar; but the reasons for holding that power to provide for assessment and collection of the stockholders' liability is vested in the Farm Loan Board apply much more strongly in the case of the Farm Loan Board because of the wide administrative and supervisory powers conferred on that Board.

III.

The Differences in Structure of the National Bank Act and Farm Loan Act Make Inferences from the Phraseology of the Former not Applicable to the Latter

1.

The Structure of the National Bank Act Adopted in 1864 Should Not Control the Interpretation of the Federal Farm Loan Act Adopted in 1916.

We take issue with the proposition that any inference can be drawn from the omission in a statute of a provision embodied in a different statute adopted over half a century earlier. However, broader considerations show the entire inapplicability of the petitioner's theory to the case at bar.

Methods of legislation differ in different countries or states at the same time and in the same country or state at different times. The National Bank Act is a product of the year 1864; the Farm Loan Act of the year 1916. One great change in this interval was the development of legislation delegating increasingly large powers to administrative boards. The change in the method of legislation during this period by vesting broad administrative powers in executive departments, in place of the specific and limited powers provided in earlier laws is well illustrated by the differences in structure of the National Bank Act and the Farm Loan Act. The powers vested in the Comptrol-

ler on the one hand and the Farm Loan Board on the other have much similarity, but the structure of the Act for accomplishing the grant of powers is radically different.

Examined in the light of this change in the method of legislating, it will be seen that what was accomplished by one method under the National Bank Act (the vesting of power in the comptroller by a series of specific details) was accomplished in the Farm Loan Act by a different method (the vesting in the Farm Loan Board of broad administrative and supervisory authority).

An examination of the provisions of the National Bank Act makes clear this difference in structure and corresponding necessity for difference in construction of the National Bank Act and the Federal Farm Loan Act.

2.

The comptroller has limited and specific powers as contrasted with wide general powers of the Farm Loan Board.

The limited and specific grants of power to the Comptroller under the National Bank Act in contrast with the wide grant of powers to the Federal Farm Loan Board under the Federal Farm Loan Act made advisable express authority to enforce the personal liability of stockholders under the National Bank Act while under the Federal Farm Loan Act this was clearly comprehended by the general grant of powers.

The fundamental duty of the Comptroller of the Currency is to require compliance with the Statutes

regarding national bank notes and to keep accurate watch of them. (U. S. C. §§1, 26-28, 101-110, 124, 132-134, 137, 138, 151-153, 168-178, 185). So far as the affairs of the bank are concerned, the comptroller's powers are granted in a series of specific details, such as approval of the bank's name or location (U. S. C. §§22, 30); definition of purchasable investment securities (U. S. C. §24); rules for acting as insurance or real estate broker (U. S. C. §92); approval of stock dividends or reduction of stock (U. S. C. §§58-59); approval of conversion of state bank (U. S. C. §35); or action as to branches (U. S. C. §36); or consolidation (U. S. C. §§33, 34, 34a). Further, the National Bank Act has great detail as to the general conduct of the bank's business (U. S. C. §§55, 56, 60, 62, 81-89, 94, 121, 122, 125, 127, 141-146, 161-164).

No general grant of powers to the comptroller is contained in the National Bank Act. There is no express provision by which "the Comptroller is charged with the execution of the National Bank Act" as the petitioner implies. (*Petitioner's brief* p. 81).

The Federal Farm Loan Act, on the other hand, contains an express comprehensive general grant of power to the Farm Loan Board (F. L. A. §§1, 3, 17 (i) and (j) U. S. C. §§641, 651, 831 see *supra* pp. 7-13).

It follows naturally, therefore, that the National Bank Act has more specific provisions as to a receivership than the Farm Loan Act.

Following out the scheme of specific powers, the National Bank Act expressly gives the comptroller power, in the case of a receivership:

(a) To give notice to creditors (U. S. C. §193),

(b) To approve claims (U. S. C. §194),

(c) To make ratable dividend of the money paid over to him by the Receiver (U. S. C. §194),

(d) To return any excess to the stockholders (U. S. C. §194),

(e) To pay the expenses of the receivership out of the assets of the Association (U. S. C. §196),

(f) To call a meeting of stockholders after payment of claims for the purpose of determining whether liquidation shall continue (U. S. C. §197), and

(g) To protect equities in mortgaged or pledged property (U. S. C. §§198, 199, 200).

In the Farm Loan Act none of these powers are expressly set forth but that Act has provisions (lacking in the National Bank Act) which confer wide general powers on the Farm Loan Board (*supra* pp. 7-13).

Petitioner's difficulty lies in the fact that he disregards the wide grant of general powers to the Farm Loan Board; he bases his argument solely on this difference in phraseology of a single sentence in the National Bank Act and claims that lack of express specification of such powers in the Farm Loan Act evidences an intention to withhold them. (See *Petitioner's brief*, pp. 46-52.)

In so doing petitioner disregards the rule that a statute should not be construed according to a single sentence or member of a sentence but according to all the provisions of the Act and its objects and policy.

Pollard v. Bailey, 20 Wall. 520, 525.

United States v. Boisdore, 8 How. 113.

A law is the best exposition of itself and every part of an act is to be taken into view for the purpose of discovering the mind of the legislature.

United States ex rel. Parish v. MacVeagh, 214 U. S. 124, 135.

Pennington v. Coxe, 2 Cranch, 33, 37.

Obviously, application of the rule of construction suggested by petitioner would lead to chaos. Powers essential to even the limited receivership permitted by the petitioner's theory would be lacking (U. S. C. §§196, 198, 199, 200). The impossibility of such a rule is evidenced by the costly and unwieldy double receivership which the petitioner is led to devise.

It becomes apparent, therefore, that any limitation of the powers of the Farm Loan Board by reference to the phraseology of the National Bank Act would be entirely inconsistent with the purpose and tenor of the Farm Loan Act and contrary to the Act's plain construction. The petitioner himself appreciates that power to require claims to be filed, etc., expressed in the National Bank Act (U. S. C. §§193-194) must be implied in the Farm Loan Board. (*Petitioner's brief* p. 81).

Far from the Farm Loan Act conferring less power on the Farm Loan Board than the comptroller has in a receivership, as contended by the petitioner, the fact is that the Farm Loan Act expressly shows an intention to give the Farm Loan Board greater power than the comptroller in such a case, because a national bank receiver may make sales of assets only on order of a court (U. S. C. §192) whereas a joint stock land bank

receiver may make sale on order either of a court or the Farm Loan Board.

Section 29 of the Farm Loan Act (U. S. C. §961) provides:

> [U. S. C. §961] ". . . Such receiver, *under the direction of the Federal Farm Loan Board,* shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, *with the approval of the Federal Farm Loan Board or upon the order of a court of record* of competent jurisdiction, may sell or compound all bad or doubtful debts, and, *on a like approval or order,* may sell all the real and personal property of such association on such terms as the Federal Farm Loan Board or said court shall direct." [Italics ours.]

IV.

The history of the Federal Farm Loan Act, when compared with that of the National Bank Act, makes clear their difference in structure and the inapplicability of the theories of construction in the Petitioner's Brief.

1.

The Farm Loan Act as Adopted.

In construing a statute, the court will consider that reports of the committees of congress are entitled to consideration.

> *United States v. St. Paul, Minneapolis & Manitoba Railway Company, et al.,* 247 U. S. 310, 318.

Statements by the chairman or other member of the committee in explanation of the bill are entitled to some consideration.

Omaha & Council Bluffs Street Railway Company v. Interstate Commerce Commission, 230 U. S. 324.

The debates and statements of individual members of congress are not entitled to any consideration.

United States v. Trans-Missouri Freight Association, 166 U. S. 290.

Petitioner (*Petitioner's brief* pp. 12-24) has placed emphasis on certain statements taken from the reports of committees of congress, appointed to consider the means for establishing a system of rural credits and has inferred that the Farm Loan Act followed the plan of the National Bank Act, in consequence of which omission of certain express provisions found in the National Bank Act must imply an intent on the part of the congress to establish the opposite rule from that provided for by the National Bank Act.

Two such reports are considered by petitioner, to-wit: the report of the United States Commission appointed to investigate and study co-operative land mortgage banks in European countries, dated January 28, 1914 (Cong. Rec. Vol. 51, part 3, p. 2486 *et seq.*) and the report of the Sub-committee on Land Mortgage Loans to the Chairman of the Joint Committee on Rural Credits, dated January 4, 1916 (Cong. Rec. Vol. 53, Part 1, p. 452, *et seq.*). The bill mentioned in the report of the Sub-committee on Land Mortgage Loans is not printed in the Congressional Record but appears as part of the complete report appearing as

document 494 in Vol. 144 of House Documents, 64th Cong., 1st Session, 1915-1916.

In an effort to establish that the National Bank Act and the Federal Farm Loan Act are in *pari materia,* petitioner (*Petitioner's brief* p. 13) quoted part of a paragraph from the report of the United States Commission of 1914 as follows:

> "As against the central bank idea, the bill suggested by the commission affords competitive banking. It is founded on American models. *It is based, to a large extent, on the plan of our national banking system, changed as the commission deemed wise to overcome the difficulties which had theretofore been shown to attach to the national banking plan.*" (Ibid. p. 2490, 2nd column, 5th par.)

On the face of the quotation it would seem to imply that the receiver of a joint stock land bank was to have the same rather than less power than the receiver of a national bank.

However the whole report must be examined to reach any conclusion as to the structure of the Federal Farm Loan Act and this paragraph must be read in conjunction with the preceding paragraph of the report to determine its meaning. An examination of the complete report shows that the above statement, quoted by petitioner, appears under the heading "ADVANTAGES OF INDEPENDENT BANKS" following a paragraph headed "CENTRAL BANK VERSUS INDEPENDENT BANKS", in which the commission considered the merits of a system involving a central bank as contrasted with the so-called American system of unit banks, as provided by the National Bank Act, and the committee concluded, from its investiga-

tion, that the unit banking system was best suited to conditions in this country. It will be noticed that the commission does not say that the bill follows the National Bank Act but that it follows the national banking system, thus indicating, in accordance with the text, that *the commission was not speaking of the structure of the National Bank Act but of unit banks as distinguished from a central bank.*

That the bill submitted by the commission did not follow the structure of the National Bank Act on the point here under consideration, is conclusively demonstrated by Section 10 of the Act, which provides for the liquidation of banks as follows:

> Sec. 10 "That the commissioner of farm-land banks is authorized and empowered, upon proper application to issue charters or certificates of incorporation . . .; and to withdraw or forfeit such charters or liquidate such banks whenever necessary, in accordance with rules to be provided, subject in all respects to the requirements and provisions herein contained."

This provision for the liquidation of banks is much broader than that of the National Bank Act and is radically different in its structure. It will further appear from an examination of the full report of the committee and from the bill submitted therewith that the commission contemplated the vesting of much broader powers in the commissioner of farm-land banks provided for by the bill to supervise the Farm Loan system than are vested in the Comptroller of the Currency under the provisions of the National Bank Act.

A further review of the report of the commission will disclose the emphasis placed by the commission on

the need for bonds of absolute safety, exempt from taxation, as instrumentalities of the government and secured by the strict supervision of a government agency. Full weight could not be given to the provisions of the Act as finally enacted unless broad administrative powers were vested in the Farm Loan Board.

From August 1913 to March 4, 1916, more than sixty bills dealing with the matter of rural credits were introduced in Congress and from a consideration of these, together with the bill introduced by the United States Commission, above referred to, the Sub-committee on Land Mortgage Loans of the Joint Committee on Rural Credits filed its report on January 3, 1916, accompanied by a proposed rural credits bill in substantially the form, so far as the provisions here under consideration are concerned, as the Federal Farm Loan Act, when finally enacted. Because the form of the bill accompanying the report represents substantially the Federal Farm Loan Act as enacted, the report of the committee is of some significance (a) in so far as the bill submitted therewith purported to establish a Farm Loan Board and define the powers of that board; and (b) in so far as the objects sought in the legislation have a bearing on its purpose and consequent construction.

The report of the committee is summarized by the following paragraphs taken therefrom (Cong. Rec., Vol. 53, Part 1, pp. 452, 455; Committee Report appearing in Vol. 144 House Documents, 64th Congress, 1st Session 1915-1916, pp. 8, 17):

"PRIMARY CONSIDERATIONS.

The primary considerations in devising such a system are:

1. Absolute safety and attractive income to the investor.

2. Low interest rates, long-term mortgages, and amortization payments for the farmer.

3. *Low cost of administration.*

4. *Simplicity of organization and operation.*

5. *Adaptability to every part of the country.*

6. Stimulation to the co-operative spirit.

These details will be discussed after a general description of the plan.

GENERAL PLAN.

Government control of the system is assured by the creation of a Federal farm loan board, independent and non-partisan, consisting of five members, appointed by the President for terms of 10 years each and paid from the Public Treasury. . . .

. . . . . .

SUMMARY.

It is believed that the system of land banks outlined in the proposed bill affords a safe and attractive farm-loan bond for the investing public—low interest rates, long-term mortgages, and easy payments for the farmers; *low cost of administration; simplicity of organization and operation; adaptability to the needs of every*

section; and stimulation to the spirit of generous co-operation among farmers."

The above history of the Farm Loan Act clearly demonstrates the emphasis placed by the committees charged with framing the law upon simplicity of operation and uniformity and attractiveness of the bonds to the investor at low rates of interest. To the end of securing simplicity of operation, broad administrative powers were vested in the Farm Loan Board so that it might, by proper administrative control, fix such procedure as experience might determine best fitted for the economical administration of the various provisions of the Act.

The efforts of the Joint Committee on Rural Credits in this connection are best expressed in the summary of the committee's report above set forth.

Petitioner's brief (See pp. 49-50, 61) takes the tone that it was the deliberate purpose of the Congress to have the stockholders' liability enforced by creditors' suit. We can find no warrant whatever for this position. On petitioner's theory it is contradicted by the fact that the McLean Bill and Fletcher Substitute (§38) provided for incorporation in the Federal Farm Act of the same express provision found in the National Bank Act for creditors' suit on voluntary liquidation where no statutory receiver is appointed.

There is nowhere throughout the proceedings the slightest manifestation of any intention that the Congress, or any one of its members, intended this liability to be enforced by a separate judicial proceeding. On the contrary, the committee reports and de-

bates show throughout that the persons therein speaking regarded all of the bills proposed as fixing broad supervision in the body charged with the administration of the Act.

In contrast with the broad administrative powers vested in the Farm Loan Board under the Farm Loan Act and the consequent simplification of provisions for administration on insolvency, the National Bank Act exhibits a studied intent to vest the Comptroller of the Currency with limited powers. The first paragraph of the Act of February 25, 1863 (12 U. S. Stats. at Large 665) providing for a system of national banks, which section has been retained without substantial change, reads in part as follows:

> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there shall be established in the Treasury Department a separate bureau, which shall be charged with the execution of this and all other laws that may be passed by Congress respecting the issue and regulation of a national currency secured by United States bonds. The chief officer of the said bureau shall be denominated the comptroller of the currency, and shall be under the general direction of the Secretary of the Treasury. He shall be appointed by the President, on the nomination of the Secretary of the Treasury, by and with the advice and consent of the Senate, and shall hold his office for the term of five years unless sooner removed by the President, . . ."

Under the Act of 1863 and the Act of June 3, 1864 (13 U. S. Stats. at Large 99) the Comptroller was permitted in many matters to act only with the concur-

rence of the Secretary of the Treasury and certain of such restrictions are still retained in the National Bank Act (12 U. S. Stats. at Large 665, §§2, 18, 26, 51; 13 U. S. Stats. at Large 99, §§1, 2, 7, 22, 24, 27, 47, 54).

No provision was made in either Act for the appointment of a receiver by the Comptroller other than upon default by the bank in the redemption of its circulating notes, and no general receivership provision was added until June 30, 1876 (19 U. S. Stats. at Large 63, June 30, 1876, §1).

Under such circumstances, the Congress might well have deemed it prudent affirmatively to specify that the receiver should enforce the stockholders' liability inasmuch as it might be doubtful from the provisions of the Act whether the Comptroller possessed the necessary administrative power to provide for such enforcement.

It is plain, therefore, that the powers of the Comptroller of the Currency are not to be compared with those of the Farm Loan Board and that the structure of the Farm Loan Act is so different from that of the National Bank Act as to make any inference from the phraseology of the one inapplicable to the other.

2.

Rejected Amendments.

Petitioner attempts (*Petitioner's brief* pp. 22, 23) to create the impression that the Congress considered and refused to amend Section 29, above quoted, so as to vest in the receiver of a joint stock land bank the same powers, duties and restrictions as a receiver ap-

pointed by the Comptroller of the Currency and to vest in the Farm Loan Board the same power over such receiver as the Comptroller of the Currency has over the receivers of national banking associations. An examination of the Congressional Record will disclose that both the McLean Bill (Bill S. 4944) and Fletcher Substitute, cited by petitioner, were referred to the Committee on Banking and Currency of the House of Representatives and, after hearings thereon, no further proceedings were taken with reference thereto in either the House or the Senate.

It is apparent from the provisions of Section 29, of the Farm Loan Act (U. S. C. §961), that such an amendment to the law as proposed by either of these Bills would greatly restrict the powers of the Farm Loan Board and its receiver. Whereas under the Act the property of the bank, both real and personal, may be sold on the approval of the Farm Loan Board, under the provisions of the McLean and Fletcher amendments such sales would require the approval of a court of competent jurisdiction. In view of the large amounts of foreclosed real estate held by joint stock land banks in receivership, the enactment of such an amendment would place a severe restriction on the efficient operation of the farm loan system.

Further, the mere introduction of such amendments in Congress ten years after the enactment of the original act and the failure of Congress to take any action whatsoever with reference to such amendments should be given no weight in interpreting the act.

Penn Mutual Company v. Lederer, 252 U. S. 523, 538.

United States v. Allen, 179 Fed. 13 (C. C. A. 8th Cir.).

Both of these Bills which failed contained express provision (McLean Bill (S 4944), §38, Fletcher Substitute, §38) for addition to the Farm Loan Act of the express provision of the National Bank Act for creditors' suit in equity to enforce the stockholders' liability in case of voluntary liquidation, yet petitioner does not question that, nonetheless, in the absence of any statutory officer to enforce the liability, such right to proceed in equity exists. (See *Petitioner's brief* pp. 60, 61.)

V.

The Joint Stock Land Banks are Constitutional Agencies of Government, and Their Administration Under the Direction and Control of the Federal Farm Loan Board Necessarily Implies a Single Receivership and Collection of the Personal Liability of Stockholders Under Direction and Control of the Board.

1.

Joint Stock Land Banks Were Created by the Congress to Serve as Fiscal Agents of the Government; They Were Created for Public and Not Private Purposes.

The constitutionality of the Federal Farm Loan Act was definitely established in *Smith v. Kansas City*

Title & Trust Company, 255 U. S. 180, 209, 210, 211, where the court held that the designation of joint stock land banks as depositaries of public money and authorization of their employment as financial agents of the Government brought them within the constitutional power of the Congress to facilitate the fiscal operations of the government and that whether technically banks or not, these organizations may serve the governmental purposes declared by the Congress for their creation.

In accord

Osborn v. Bank of the United States, 9 Wheat. 738, 860, 861.

Van Reed v. Peoples National Bank of Lebanon, 198 U. S. 554.

2.

Proper and Expeditious Administration of the Affairs of Joint Stock Land Banks is Essential to the Fiscal Policies of the Government.

The rule was early laid down that national banks as instruments designed to be used to aid the government are within the discretionary power of the Congress; and that the power of the Congress over these banks is exclusive.

Farmers & Mechanics' Natl. Bank v. Dearing, 91 U. S. 29, 33, 34.

The same principle applies to joint stock land banks.

3.

The Congress Intended to Continue Governmental Control Through Insolvency Proceedings.

No one disputes the necessity for supervision of joint stock land banks by the Federal Farm Loan Board prior to insolvency. If the Congress has deemed such supervision essential to furtherance of the fiscal policies of the Government while joint stock land banks are solvent, certainly the winding up and dissolution of such banks should be no less important in its effect upon such policies.

This principle was given effect in *Cook County National Bank v. United States,* 107 U. S. 445, 448, where the court considered whether a general statute giving a preference to the United States against insolvent debtors applied to insolvent national banks in the hands of statutory receivers, and held the provisions of the National Bank Act for administration of insolvent national banks to be exclusive, saying:

> [107 U. S. 448] "From the view we take of the act authorizing the formation of national banks, it is unnecessary to consider whether or not this position is tenable. We consider that act as constituting by itself a complete system for the establishment and government of national banks, prescribing the manner in which they may be formed, the amount of circulating notes they may issue, the security to be furnished for the redemption of those in circulation; their obligations as depositaries of public moneys, and as such to furnish security for the deposits, and

designating the consequences of their failure to redeem their notes, their liability to be placed in the hands of a receiver, and the manner, in such event, in which their affairs shall be wound up, their circulating notes redeemed, and other debts paid or their property applied towards such payment. Everything essential to the formation of the banks, the issue, security, and redemption of their notes, the winding up of the institutions, and the distribution of their effects, are fully provided for, as in a separate code by itself, neither limited nor enlarged by other statutory provisions with respect to the settlement of demands against insolvents or their estates."

See also

Boyd et al v. Schneider, et al., 131 Fed. 223, at 227 (C. C. A. 7th Cir. 1904).

4.

The Farm Loan Board's Powers are Exclusive.

Section 26 (U. S. C. §931) of the Federal Farm Loan Act provides in part:

(Sec. 26) ". . . First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation."

Section 27 (U. S. C. §941) provides:

(Sec. 27) "That farm loan bonds issued under the provisions of this Act by Federal land banks

or joint stock land banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits."

On the face of the matter, a rather peculiar and unusual situation will result if it be held that, notwithstanding the fact that the Farm Loan Act provides for the administration of the Act, including the provisions for insolvency, by the Federal Farm Loan Board, such Board cannot provide for enforcement of the stockholders' double liability, thus completely to satisfy the principal obligations of the insolvent bank provided by one provision of the Act to be instrumentalities of the government and by another, as a special inducement to investors, expressly made lawful investments for all fiduciary and trust funds and security for all public deposits.

We submit that the Congress necessarily must have intended to vest in the Farm Loan Board the authority completely to administer the affairs of the bank, including the stockholders' double liability, so that these obligations, defined by the law as instrumentalities of the government and by it made legal investments for trust funds and security for public deposits, might be finally liquidated.

On principle, therefore, it seems essential to preservation of the constitutional purpose of joint stock land banks to assist in the fiscal operations of the government that the courts refuse to interfere with the officers of the government vested with the administrative authority to supervise and direct these agencies and to direct and control the administration of the Act.

In *Krauthoff v. Kansas City Joint Stock Land Bank et al.*, 23 Fed. (2d) 71 (C. C. A. 8th Cir. 1927) the court said:

> [23 Fed. (2d) 73] "The bank was a federal agency. Smith v. Kansas City Title Co., 255 U. S. 180, 41 S. Ct. 243, 65 L. Ed. 577. The Act under which it was created and authorized to transact business, subject to the supervision and control of the board, prescribes, as we view it, the way in which it should be wound up in the case of insolvency. For that purpose the board took charge of it, as does the Comptroller of an insolvent national bank. A receiver appointed by the board is a public officer, as much so as a receiver appointed by the Comptroller. United States v. Weitzel, 246 U. S. 533, 38 S. Ct. 381, 62 L. Ed. 872. At the time these suits were brought the board through its receiver was in possession discharging the duty imposed upon it by Congress. We think we have no right to interfere in its discharge of that duty. Early in the administration of the National Banking Act it was contended that the Comptroller, an executive officer, was, in discharging his duties, attempting to exercise judicial functions which belonged exclusively to the courts. The contention was held to be without merit. See Bushnell v. Leland, 164 U. S. 684, 17 S. Ct. 209, 41 L. Ed. 598. That seems to us to be the substance of the contention here."

In similar cases involving the administration of insolvent national banks the courts have held the administrative machinery established by Congress to be exclusive.

> *Liberty National Bank of South Carolina v. McIntosh*, 16 Fed. (2d) 906, 909-10 (C. C. A. 4th Cir. 1927).

Gockstetter v. Williams, 9 Fed. (2d) 354, 356 (C. C. A. 9th Cir. 1925).

Altman v. McClintock, 20 Fed. (2d) 226, 229, 231 (Dist. Ct., Dist. of Wyo. 1927).

The rule, vesting exclusive administrative authority in the statutory officer or body charged with the administration of a law, has been applied generally to federal administrative officers and boards.

Loomis v. Lehigh Valley Railroad Company, 240 U. S. 43, 50 (Interstate Commerce Commission).

Central Trust Company v. Central Trust Company of Illinois, 216 U. S. 251 (Postmaster General).

Decatur v. Paulding, 14 Pet. 497, 515. (Administration of pension fund by Secretary of the Navy).

Cosmos Exploration Company v. Gray Eagle Oil Company, 190 U. S. 301 (Administration of the forest reserve act by the Land Department).

Texas and Pacific Railway Company v. Abilene Cotton Oil Company, 204 U. S. 426. (Interstate Commerce Commission).

United States ex rel Ness v. Fisher, 223 U. S. 683, 693 (Secretary of the Interior).

5.

The Stockholders' Liability is to be Applied with and in Aid of the Assets of the Bank toward the Satisfaction of its Obligations.

As above set forth, we believe it clear that the Federal Farm Loan Act intends its administration to be under the exclusive direction and control of the Federal Farm Loan Board. Such exclusive direction and control in the case of insolvency of a joint stock land bank necessarily imports that the Farm Loan Board should have exclusive direction of the means of providing payment of the Bank's obligations. This inclusion is emphasized by the fact that the great mass of every joint stock land bank's obligations necessarily are its bonds which are provided for specially and in detail by the Farm Loan Act and are defined as instrumentalities of the government. (F. L. A. §§16, 18, 19, 20, 21, U. S. C. §§814; 816-821; 841-864.)

As stated by this court with reference to the similar stockholders' liability of national banks in *Richmond v. Irons,* 121 U. S. 27, 50: "Admitting that this liability (of stockholders) is not strictly an asset of the bank, . . . yet it is treated as a means of creating a fund to be applied with and in aid of the assets of the bank toward the satisfaction of its obligations."

The case of *McNeill v. Pace,* 69 Fla. 349; 68 So. 177, (1915), evidences the tendency of the courts where the statute permits of such a construction to hold that a statutory receiver may enforce the stockholders' personal liability.

6.

Purpose Indicated in Heading of Section 29 of Act.

Section 29 of the Farm Loan Act (U. S. C. §961) is designated as providing for "Dissolution and Appointment of Receivers." An examination of Section 29 discloses the purpose of the appointment of a receiver to be the winding up and dissolution of the corporation. From this it would seem to follow that an interpretation which authorizes the Farm Loan Board completely to administer the affairs of the bank should be favored over one which requires enforcement of the stockholders' personal liability and distribution of the assets of the bank in a separate proceeding instituted by creditors in a court of equity.

Krauthoff vs. Kansas City Joint Stock Land Bank et al., 23 Fed. (2d) 71 (C. C. A. 8th Cir. 1927).

Wilson et al. v. Book et al., 13 Wash. 676; 43 Pac. 939 (*supra* p. 15).

In *State ex rel Stone v. Union Stock Yards, etc. Bank et al.*, 103 Ia. 549, 70 N. W. 752, the court, in holding that a statutory receiver appointed to wind up the affairs of a bank could enforce its stockholders' liability, said:

> [70 N. W. 755] " . . . . It is also to be said that chapter 208, giving rise to this liability of stockholders, is made, by its terms, a part of the general incorporation law under which the defendant bank was organized. That law contains the provisions under which the state, on the relation

of the attorney general, is to commence such suits to wind up such corporations, and all its provisions are to be construed together. It would seem like a strange and uncalled for state of affairs for the suit, at the instance of the state, to proceed until the assets of the bank were exhausted, and then subject the creditors to delays, and the annoyance of another like suit, at their own instance, to collect and distribute this fund. See, for a case in point and quite fully considered, Wilson v. Book (Wash.) 43 Pac. 939. See also, Watterson v. Masterson (Wash.) 46 Pac. 1041. We reach the conclusion that the assessment is not invalid because of a want of authority for a receiver, in case of a valid assessment, to collect and distribute the fund under orders of the court."

The language of the court in the above case is similar to that of this court in *Richmond v. Irons*, 121 U. S. 27, where the court said:

[121 U. S. 49-50] "In the case of involuntary liquidation under the supervision of the Comptroller of the Currency, the receiver appointed by him is authorized and required, not only to collect and apply the proper assets of the bank to the payment of its debts, but also, so far as may be necessary, to enforce the individual liability of the shareholders. It thus appears that the enforcement of this liability is a part of the liquidation of the affairs of the bank; at least, so closely connected with it as to constitute but one continuous transaction. When, in the case of voluntary liquidation, the proceeding is instituted by one or more creditors for the benefit of all, by means of the jurisdiction of a court of equity, there seems to be no reason why the nature of the proceeding should be considered as changed. The intention of Congress evidently was to provide ample and effective remedies in all the specified cases for the protection of the

public and the payment of creditors, by the application of the assets of the bank and the enforcement of the liability of the stockholders. Admitting that this liability is not strictly an asset of the bank, because it could not be enforced for its benefit as a corporation nor in its name, yet it is treated as a means of creating a fund to be applied with and in aid of the assets of the bank towards the satisfaction of its obligations. The two subjects of applying the assets of the bank and enforcing the liability of the stockholders, however otherwise distinct, are by the statute made connected parts of the whole series of transactions which constitute the liquidation of the affairs of the bank. . . ."

See also—

King, et al. v. Armstrong, 50 Ohio State 222; 34 N. E. 163.

Hynes v. Illinois Trust & Savings Bank, et al., 226 Ill. 95; 80 N. E. 753; 10 L. R. A. (N. S.) 472.

7.

Payment of Assessments without Suit should be Possible.

Certainly, there should be some place where a stockholder can pay the assessment without suit, and the logical person for this purpose and for the enforcement of the liability is the statutory receiver, appointed by the Federal Farm Loan Board.

8.

Right of Offset against Dividends on Bonds held by Stockholders should be Preserved.

Further, if the Farm Loan Board is not the proper party to administer the stockholders' liability, then the right to offset dividends on bonds or other claims in the hands of stockholders may be lost.

VI.

Petitioner's Construction of the Farm Loan Act, if Adopted, Will Involve Duplication of Receivership, Together With Increased Expense and Delay, and Will Necessitate Ancillary Equity Suits in Thirty States.

The Congress could not have intended so unreasonable an interpretation.

Petitioner attempts, by a comparison of the provisions of the Farm Loan Act with those of the National Bank Act, to establish a congressional intention that the Farm Loan Board shall be responsible for reducing to cash all the assets and liabilities of every insolvent bank, and that if those prove insufficient to satisfy all claims, the creditors must then resort to a separate proceeding in a court of equity for enforcement of their stockholders' liability. (*Petitioner's brief*, p. 65.)

Petitioner's brief thus assumes that the Congress intended to make the creditors of the bank bear the expense of a double receivership.

This suggested interpretation of the Farm Loan Act, showing a complete disregard of the broad administrative powers vested in the Farm Loan Board, is expressly contrary to the principles governing the liquidation of such institutions established in *Kennedy v. Gibson*, 8 Wall. 498, 505 (*supra* pp. 25-26) and *Korbly, Receiver, v. Springfield Institution for Savings, et al.*, 245 U. S. 330, 333.

The expense of an additional receivership in itself seems controlling on the question of intention.

The duplication of procedure and expense seems an absurdity inasmuch as the Receiver appointed by the Farm Loan Board is an officer of the United States subject to the order of the Board and represents creditors as well as the corporation.

Under the provisions of Section 29 of the Farm Loan Act (U .S. C. §§961, 962, 963), such receiver:

(1) Executes bond to the United States for the faithful performance of his duties;

(2) Assumes control as an officer of the United States:
United States v. Weitzel, 246 U. S. 533, 540, 541.
Krauthoff v. Kansas City Joint Stock Land Bank, et al., 23 Fed. (2d) 71, 73.
Steele v. Randall, 19 Fed. (2d) 40, 42.

(3) Pays all moneys collected to the Treasurer of the United States *"subject to the order of the Federal Farm Loan Board."*

(4) Represents creditors as well as the corporation:
Kennedy v. Gibson, 8 Wall. 498, 506.

In addition to the double receivership, it will be necessary, if the Farm Loan Board is without authority to administer the stockholders' personal liability, to have ancillary proceedings in more than thirty states in order that the liability may be enforced.
Great Western Mining Co. v. Harris, 198 U. S. 561, 574.

The difficulties and expense incident to the enforcement of the stockholders' personal liability by a court receiver are illustrated by the history of attempted enforcement by such a receiver in Minnesota.
Hale v. Allinson, 188 U. S. 56, 65.

In the light of the above authorities illustrating the complicated and expensive procedure necessary to enforce the stockholders' personal liability through a court receiver, it is plain that the Congress could not have intended to burden the creditors of insolvent joint stock land banks:

(a) with the expense of two receiverships,

(b) with the expense and uncertainty of ancillary proceedings,

(c) With the delay incident to appointment of a court receiver in a case where a governmental board, with broad administrative powers, acquainted with the facts and competent to determine claims and enforce the stockholders' liability, has appointed a receiver who is engaged in liquidating the affairs of the bank, and

(d) with the uncertainty, delay and expense arising out of the necessity for a creditor applying to a court for the appointment of a judicial receiver to continue the liquidation following sequestration of the assets of the bank by its statutory receiver.

As stated by the Circuit Court of Appeals for the Eighth Circuit in *Krauthoff v. Kansas City Joint Stock Land Bank et al.*, 31 Fed. (2d) 75:

> [31 Fed. (2d) 78] ". . . It is hardly to be presumed that Congress intended in carrying out the purposes of this Act to have various receivers for different kinds of assets, resulting merely in inextricable confusion and chaos. The Act should be carried out according to its terms and not lose its efficiency in a maze of philosophical technicalities. It seems to us the Act is perfectly plain, that the Farm Loan Board is charged with carrying out its provisions and to see 'that the moneys are applied toward the satisfaction of the bonds.' "

This conclusion also conforms to the fact that the Farm Loan Act had among its "primary considerations," "low cost of administration" and "simplicity of organization and operation" (Cong. Rec. Vol. 53 Part 1, p. 452; *Supra* pp. 37-38).

The interpretation suggested by counsel for the petitioner would ignore the rule that all laws are to be given a sensible construction and that where a literal application of a statute would lead to absurdity or where a particular construction of a statute would occasion great inconvenience or produce inequality and injustice, that view is to be avoided if a reasona-

ble interpretation can be given to it consistent with the legislative purpose.

United States v. Katz, 271 U. S. 354, 357.
Knowlton v. Moore, 178 U. S. 41, 77.

VII.

Construction of Act by Farm Loan Board.

The construction here maintained by the respondent is that adopted by the Federal Farm Loan Board (Rec. p. 4) and such construction should be given great weight, particularly where, as in this case, administration of the law is under "the direction and control" (Farm Loan Act §1 U. S. C. §641) of the Board, the Board is charged with execution of the Act and broad, supervisory and incidental powers are vested in it.

Federal Farm Loan Act, §§1, 3, 17 (i) and (j) 29. (U. S. C. §§641, 651, 831 (i) and (j), 961 and 962).

This court will, if possible, follow the construction placed on a statute by the department of the government charged with its administration.

Jacobs v. Prichard, 223 U. S. 200, 213.
U. S. v. Cerecedo Hermanos y Cia, 209 U. S. 337.
Swigart v. Baker, 229 U. S. 187.
Blanset v. Cardin, 256 U. S. 319.
National Lead Co. v. U. S., 252 U. S. 140.

VIII.

Cases Cited by Petitioner.

1.

Cases on Stockholders Liability Arising Under State Statutes are Practically Irreconcilable and are not Controlling here.

In none of the cases under State statutes cited by petitioner *(Petitioner's brief* p. 49) was there a governmental board charged with the administration of the act and vested with the broad powers of the Farm Loan Board.

Fundamentally in cases arising under state laws the essential question always is the scheme intended by the legislature; in other words, what liability did the legislature intend to create and what remedy did the legislature intend therefor?

Terry v. Little, 101 U. S. 216, 217.

In considering decisions under state laws, the peculiar phraseology of the state act must be kept in mind, such as whether the liability is "to creditors" or "for debts", etc., and what, if any, remedy the state statutes provide, expressly or impliedly.

Wilson, et al. v. Book, et al., 13 Wash. 676; 43 Pac. 939.

See also *Patterson v. Lynde,* 106 U. S. 519.

Where the law fails to provide for a statutory receiver to administer the affairs of the insolvent corpo-

ration, a proceeding by creditors' bill necessarily is the only available remedy and the authorities so holding are not in point here.

Richmond v. Irons, 121 U. S. 27.

A statutory receiver "to close up the affairs of the company" has been held to have power to enforce the double liability under language similar to that here.

McNeill v. Pace, 69 Fla. 349; 68 So. 177.

In accord:

Wilson, et al., v. Book, et al., 13 Wash. 676, 43 Pac. 939.

This is so, even where the liability is "to creditors".

State ex rel. Stone v. Union Stock Yards, etc., Bank et al., 103 Ia. 549, 70 N. W. 752, 753.

In cases arising under state statutes, the federal courts deal with the matter as the construction of a state statute and follow the state rules, and that is the first point for consideration.

Terry v. Little, 101 U .S. 216, 217.

The controlling governmental interest in administration present in the case of constitutional agencies of the Government, such as joint stock land banks, is not present in the case of ordinary corporations formed under general state laws. Every presumption should be in favor of complete administration by the Government where, as in this case, such administration is obviously in furtherance of the constitutional purpose.

2.

The Cases on Statutory Construction Cited by Petitioner are Inapplicable to this Case.

The petitioner cites a large number of cases on principles of statutory construction and particularly refers to what he calls the "it would have been easy to say so" rule (*Petitioner's brief* pp. 41-45). That, however, is not a requirement that statutes cannot be in general form or must expressly specify every detail, but at most, that implications therein shall not be inconsistent or out of harmony with the rest of the enactment. This, for instance, was the case in *United States v. Chase,* 135 U. S. 255, 259, where the general term "writing", used in connection with books, pamphlets, etc., in a mail regulation, was held not to include a sealed letter, particularly in view of other language in the Act; and in *Baltimore etc. Railroad Company v. Grant,* 98 U. S. 398, 403, the court used this phrase to show that in the statute the "language employed should have its usual and ordinary signification". On the contrary, the main argument of the petitioner is directed merely to the proposition that, because another statute (the National Bank Act adopted 52 years earlier) contains express provision with regard to enforcement of liability by the receiver, the statute here involved should not be held to include such power unless expressly set forth notwithstanding the scope of the general powers vested in the Board charged with its administration. We have hereinbefore discussed in detail the considerations controlling construction in the case at bar.

Further while it is not necessary to go so far in the case at bar, it should be noted that the rule referred to by the petitioner is subject to limitations set forth in the very cases cited in his brief.

In *United States v. Goldenberg*, 168 U. S. 95, 103, immediately preceding and following the language quoted in the petitioner's brief, it is said:

> [168 U. S. 103] " . . . It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent . . . In the case at bar the omission to make specific provision for the time of payment does not offend the moral sense; *Holy Trinity Church v. United States*, 143 U. S. 457; it involves no injustice, oppression or absurdity, *United States v. Kirby*, 7 Wall. 482; *McKee v. United States*, 164 U. S. 287 . . ."

It is clear that petitioner's interpretation of the rule "it would have been easy to say so" if applied to administrative bodies would limit their powers beyond any reasonable intent of the Congress. See for instance:

Knight v. United States Land Association, 142 U. S. 161, 181.

United States v. Bailey, 9 Pet. 238, 255.

Cosmos Exploration Company v. Gray Eagle Oil Company, 190 U. S. 301, 309.

Catholic Bishop of Nesqually v. Gibbon, 158 U. S. 155, 166.

Further applied to the very statutes here discussed petitioner's rule is contradicted by the fact that al-

though the National Bank Act (U. S. C. §192) expressly provides for the Comptroller directing a receiver in the collection of debts of the bank, etc., and in the very same section omits any such provision as to the receiver enforcing the stockholder's liability (See *supra* pp. 24-25), yet the Comptroller has been held to have the power to levy a conclusive assessment on the stockholders.

Kennedy v. Gibson, 8 Wall. 498, 505 and other cases cited *(supra* p. 25).

CONCLUSION.

The whole argument of the petitioner reduces itself to an attempted inference from the omission in the Farm Loan Act, adopted in 1916, of the express provision for enforcement of the stockholders liability set forth in the National Bank Act adopted in 1864. The argument overlooks the fact that even under the National Bank Act the Comptroller's power of assessment of this liability is implied; it disregards the difference in structure of the acts; it ignores the broad general powers given to the Farm Loan Board which are not given to the Comptroller; and it gives no weight to the confusion, delay and waste that would result from this construction.

No reasonable construction of the Act can justify a second receivership; the existence of the statutory receiver acting under the direction of the Farm Loan Board vested by statute with the broadest powers of administration and liquidation necessarily excludes any possibility of an accompanying judicial receivership. The Congress certainly could not have intended

so peculiar or unusual a result; on the contrary the intention of the Act is plain to vest in the Farm Loan Board the power to assess the stockholders' statutory liability and to have it collected through the receiver appointed by the Board.

We respectfully submit that the judgment of the Circuit Court of Appeals should be affirmed.

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APPENDIX.

STATUTES.

FEDERAL FARM LOAN ACT.

The enacting clause of the Federal Farm Loan Act provides in part:

"An act . . . to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

Section 1 of the Act (U. S. C. §641) provides:

"That this Act may be cited as the 'Federal Farm Loan Act'. *Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created.*" [Italics ours.]

Section 3 of the Act (U. S. C. §651) provides:

"That there shall be established at the seat of government in the Department of the Treasury a bureau *charged with the execution of this Act* and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board." [Italics ours.]

Section 16 of the Act (U. S. C. §812) provides:

"Shareholders of every joint stock land bank organized under this Act shall be held indi-

vidually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

Section 17 of the Act (U. S. C. §831) provides in part:

"That the Federal Farm Loan Board shall have power—. . .

"(i) To exercise *general supervisory authority* over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for. [Italics ours.]

"(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act."

Section 26 of the Act (U. S. C. §931) provides:

". . . First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation."

Section 27 of the Act (U. S. C. §941) provides:

"That farm loan bonds issued under the provisions of this Act by Federal land banks or joint

stock land banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits."

Section 29 of the Act provides in part:

[U. S. C. §961] "Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: Provided, That no national farm loan association shall be declared insolvent by said board until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least $150,000 in the Federal land bank district, unless such association shall have been in default for a period of two years. *Such receiver, under the direction of the Federal Farm Loan Board,* shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, *with the approval of the Federal Farm Loan Board* or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, *and, on a like approval or order,* may sell all the real and personal property of such association *on such terms as the Federal Farm Loan Board* or said court shall direct." [Italics ours.]

[U. S. C. §962] "Such receiver shall pay over all money so collected to the Treasurer of the United States *subject to the order of the Federal Farm Loan Board* and also make report to said board of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received." [Italics ours.]

[U. S. C. §963] "Upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations."

[U. S. C. §965] "No national farm loan association, Federal land bank or joint stock land bank shall go into voluntary liquidation without the written consent of the Federal Farm Loan Board, but national farm loan associations may consolidate under rules and regulations promulgated by the Federal Farm Loan Board."

NATIONAL BANK ACT.

"An Act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof." (13 U. S. Stats. at Large June 3, 1864.)

U. S. C. Sec. 1. "There shall be in the Department of the Treasury a Bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds and, under the general supervision of the Federal Reserve Board, of all Federal reserve notes, the chief officer of which bureau shall be called the Comptroller of the Currency and shall perform his duties under the general directions of the Secretary of the Treasury."

U. S. C. Sec. 21. "Associations for carrying on the business of banking under this chapter may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. . . ."

U. S. C. Sec. 63. "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares."

U. S. C. Sec. 64. "The stockholders of every national banking association shall be held individually responsible for all contracts, debts, and engagements of such association, each to the amount of his stock therein, at the par value thereof in addition to the amount invested in such stock. . . ."

U. S. C. Sec. 65. "When any national banking association shall have gone into liquidation under the provisions of Section 181 of this title, the individual liability of the shareholders provided for by Section 63 of this title may be enforced by any creditor of such association, by bill in equity, in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association, against the shareholders thereof, in any court of the United States having original jurisdiction in equity for the district in which such association may have been located or established."

U. S. C. Sec. 66. "Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name."

U. S. C. Sec. 181. "Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock."

U. S. C. Sec. 191. "Whenever any national banking association shall be dissolved . . . or whenever any creditor of any national banking association shall have obtained a judgment against it in any court of record and made application, accompanied by a certificate . . . stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the comptroller shall become satisfied of the insolvency of a national banking association, he may . . . in either case, appoint a receiver who shall proceed to close up such association, and enforce the personal liability of the shareholders, as provided in Section 192."

U. S. C. Sec. 192. "On becoming satisfied, as specified in Sections 131 and 132, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the comptroller of the currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all

bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings.

"Provided, that the comptroller may, if he deems proper, deposit any of the money so made in any regular Government depositary, or in any state or national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depositary to deposit United States bonds or other satisfactory securities with the Treasurer of the United States for the safekeeping and prompt payment of the money so deposited. Such depositary shall pay upon such money interest at such rate as the comptroller may prescribe, not less, however, than 2 per centum per annum upon the average monthly amount of such deposits."

U. S. C. Sec. 193. "The comptroller shall, upon appointing a receiver, cause notice to be given, by advertisement in such newspapers as he may direct, for three consecutive months, calling on all persons who may have claims against such

association to present the same, and to make legal proof thereof."

U. S. C. Sec. 194. "From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held."